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CONSTITUTIONAL LAW—CONSTRUCTION.—*STATE v. McCARTY*, 59 SOUTH., 543 (ALA.).—*Held*, that a constitution must be interpreted so as to carry out the great principles of the government, and not be given any technical construction which will defeat them.

The terms *construction* and *interpretation* are used interchangeably in the principal case. Interpretation differs from construction in this: that interpretation is used for the purpose of ascertaining the true sense of any form of words, while construction involves the drawing of conclusions regarding subjects that are not always included in the direct expression. *Bloomer v. Todd*, 3 Wash. T., 612. In practice both terms are frequently used synonymously. *Bouvier Law Dict.* The law as laid down in the principal case does not consider the fundamental rules which govern the construction of a constitution. The purpose, in construing a constitutional provision, is to ascertain and give effect to the intent of the people in adopting it. *Hills v. Chicago*, 60 Ill., 86; *Miller v. Dunn*, 72 Cal., 465; *Newall v. People*, 7 N. Y., 97. The extremes of both a liberal and a strict construction are to be avoided. *Steamboat Co. v. Livingston*, 3 Cow. (N. Y.), 713; *State v. Ashley*, 1 Ark., 513. The words used are presumed to have been used in their ordinary and natural meaning. *Gibbons v. Ogden*, 9 Wheat. (U. S.), 1; *Little v. Van Evrea*, 49 N. Y., 281. The real intention, when once accurately ascertained, will prevail over the literal sense of the terms employed in the instrument. *District Tp. v. Dubuque*, 7 Iowa, 262. Where both a technical and a popular construction are possible the latter prevails. *Weill v. Kenfield*, 54 Cal., 111; *People v. N. Y. Cent. R. R. Co.*, 24 N. Y., 488. But where the words are borrowed from the common law they retain their fixed technical meaning. *Carpenter v. State*, 4 How. (Miss.), 166; *McGuinness v. State*, 9 Humph. (Tenn.), 47.

CRIMINAL LAW—CONDUCT OF TRIAL—ABSENCE OF JUDGE.—*HUGHES v. STATE*, 149 S. W., 173 (TEX.).—*Held*, that the temporary absence of a judge from the court room during the trial is not ground for a reversal unless during his absence something occurs prejudicial to the accused. Davidson, P. J., *dissenting*.

The weight of American authority sustains the proposition that there can be no Court without a judge, and that it is his duty to be present during all stages of the trial; *People v. Blackburn*, 127 Cal., 248; *Turbesville v. State*, 56 Miss., 793; and that unless the parties consent to such act, absence will be ground for reversal. *Smith v. Sherwood*, 95 Wis., 558; *State v. Smith*, 49 Conn., 376. It has even been held that a judge must be visibly present at all times; *State v. Beuerman*, 59 Kan., 586; *People v. Tupper*, 122 Cal., 424; though there is some authority for the proposition that a judge may be out of sight but within hearing and so able to pass on any question that may arise. *Rowe v. People*, 26 Colo., 542; *State v. Porter*, 105 Iowa, 677. A judge, however, to avoid a reversal must always be present during the summing up of counsel. *Hayes v. State*, 58

Ga., 35; *Patin v. State*, 38 Neb., 862; *Brownlee v. Hewitt*, 1 Mo. App., 360. The case under discussion holding that prejudice during the absence of a judge must be shown in order to constitute error, is supported by a minority of authorities. *Baxter v. Ray*, 52 Iowa, 336. If counsel proceed with their arguments after the judge's departure, though prejudice be shown, no appeal will be allowed. *Oakley v. Aspinwall*, 3 N. Y., 547. Some States, also, adopt the view that if absence by the judge is not complained of at the time, a new trial will not be granted. *O'Shields v. State*, 81 Ga., 301; *Pritchett v. State*, 92 Ga., 301. The holding of the principal case, though probably not in accord with the present numerical weight of authority on this subject, is at least more in accord with common sense, and seems to lay down a better rule.

INTOXICATING LIQUORS—SALE WITHOUT LICENSE—BURDEN OF PROOF—SALT LAKE CITY V. ROBINSON, 125 PAC., 657 (UTAH).—*Held*, that the burden is on one charged with selling intoxicants without a license to show that he had a license to sell.

It is held in Kansas that where a defendant is prosecuted for selling intoxicating liquor without a license the burden of proving a want of license is upon the prosecution. *State v. Kuhuke*, 26 Kan., 405; *State v. Nye*, 32 Kan., 201. In Wisconsin the doctrine is that, in such prosecution, the State must produce some presumptive evidence that the defendant had no license before he can be called upon to prove the contrary. *Heplar v. State*, 58 Wis., 46; *Mehan v. State*, 7 Wis., 670. In two early cases the Supreme Court of Massachusetts held that the prosecution must prove that the accused had no license, and no presumption that he had none could arise from the act of selling. *Com. v. Livermore*, 2 Allen (Mass.), 292; *Com. v. Thurlow*, 24 Pick. (Mass.), 374. Thereupon the legislature passed an act that in all prosecutions for liquor selling the legal presumption should be that the defendant had not been licensed, thus reversing what had been held to be the Common Law rule in these two cases. This was held to be within the powers of the legislature. *Com. v. Kelly*, 10 Cush., 69. An early case in North Carolina also held that the allegation of the want of a license in a bill of indictment for selling spirituous liquor must be proved on the part of the State. *State v. Evans*, 5 Jones' Rep. (N. C.), 250. But the generally established rule is stated by the main case. *Com. v. Belou*, 115 Mass., 139; *Jefferson v. People*, 101 N. Y., 19; *Lucio v. State*, 35 Tex. Crim., 320. Of course, the word *burden*, as used in the main case, must be understood to mean merely the burden of proceeding; otherwise it would be requiring the accused to establish his innocence, which would be contrary to the notion of the Criminal Law which regards him as innocent until proved guilty.

MANDAMUS—OFFICERS SUBJECT TO MANDAMUS—GENERAL COUNCIL OF CITY.—CITY OF PEDUCAH V. BOARD OF EDUCATION OF CITY OF PEDUCAH, 145 S. W., 1 (KY.).—*Held*, that where it is proper for the general council to